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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,283	04/01/2004	Robert James Johnson	702421-635-004	9508
28104	7590	08/14/2006	EXAMINER	
JONES DAY 77 WEST WACKER CHICAGO, IL 60601-1692			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 08/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/816,283

Applicant(s)

JOHNSON ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) 51-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 26-36, 38 and 40 is/are rejected.
- 7) ☒ Claim(s) 12, 14-25, 37, 39 and 41-50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/15/04 & 06/27/06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The claims filed July 10, 2006 do not appear to contain any amendments. Indeed, no claim is identified as amended.

Therefore, the claims currently under consideration are those filed April 01, 2004.

2. Applicant's election of Group I in the reply filed on July 10, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 51-77 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

3. The drawings are objected to because reference numeral "86" denotes different elements in Fig. 4, reference numeral "90" denotes different elements in Fig. 4, and reference numerals "90", "92" and "94" denote different elements between Figs. 4 and 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the

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replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "disposed for engagement" subject matter set forth in claims 3 and 28, and "structured and dimensioned" subject matter set forth in claims 4, 12, 29 and 37, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. Claims 1, 3-8, 26 and 28-33 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while

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being enabling for an eye wash station comprising a housing, does not reasonably provide enablement for only a nozzle and movable conduit. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

6. Claims 1-50 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites "the flow path being closed to fluid flow when the conduit is in a first position". Claim 26 recites similar subject matter. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The flow path is not disclosed as closable after the membrane has been ruptured.

7. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to whether the "source of eye wash fluid" is intended to be part of the claimed combination since

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structure of the "eye wash station" is defined as being connected thereto (ln. 4), but no positive structural antecedent basis therefor has been defined.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 9-11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Kammen.

The Van Kammen reference discloses an eye wash station comprising: a source of fluid 13; a nozzle 22; a conduit 28; and a housing 12 including a tray 18 and a handle 20, as claimed.

10. Claims 1, 2, 8, 26, 27 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Demeny et al. '406.

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The Demeny et al. '406 (Demeny) reference discloses an eye wash station comprising: a bag 21; a nozzle 22; a conduit 24; a housing 12; and a retainer clip 36, as claimed. The conduit is able to be moved ("movable") between many positions in which the flow path may be closed or open. The ambiguous language of claim 1 does not distinguish this structure in Demeny.

11. Claims 26, 27, 33-36, 38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Kammen and Demeny.

Although the source of fluid of the Van Kammen eye wash station does not include a bag, as claimed, attention is directed to the Demeny reference which discloses an analogous eye wash station which further includes a source of fluid having a bag 21. Therefore, in consideration of Demeny, it would have been obvious to one of ordinary skill in the eye wash station art to associate a bag with the Van Kammen source of fluid in order to facilitate replacement.

12. Claims 3-7 and 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Demeny and Christine et al.

Although the Demeny bag does not include a membrane and piercing element, as claimed, attention is directed to the Christine et al. (Christine) reference (Fig. 6) which discloses an analogous bag which further includes a membrane 38 and piercing element 68. Therefore, in consideration of Christine,


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it would have been obvious to one of ordinary skill in the bag art to associate a membrane and piercing element with the Demeny bag in order to maintain sterility.

13. Claims 12, 14-25, 37, 39 and 41-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300..



Robert M. Fetsuga  
Primary Examiner  
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